2.00 P.M.

The House re-assembled after lunch at three minutes past two of the clock,

MR. CHAIRMAN in the Chair

GOVERNMENT BILLS

MR. DEPUTY CHAIRMAN: Now we shall take up the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2009.

The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2009

THE MINISTER OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Sir, I beg to move:

That the Bill further to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958, as passed by Lok Sabha, be taken into consideration.

Sir, I wish to submit that the Sixth Pay Commission made new provisions for the salaries and allowances of the Civil Services. Consequently, salaries and perks of the judiciary were also to be reviewed. This Bill reals with the salaries of the judges of the High Courts and the Supreme Court, their sumptuary allowances, and pension matters. Sir, this is a token increase because of the recommendation of the Sixth Pay Commission. Salary of the High Court judges is on a par with the Secretaries to the Government. Similarly, the judge of the Supreme Court is paid a salary equivalent to the Cabinet Secretary. And the Chief Justice of India's salary is Rs. one lakh. This is a nominal increase consistent with the dignity of office. This was debated and passed unanimously in the Lok Sabha. Members expressed their views with freedom. I wish the same gesture is ensured in this august House, because judges don't speak for their own salaries. Parliament always decides it.

And, this should be kept in mind when discussing it. Other matters relating to judiciary may come in during the debate. I would like to be enlightened on the problems and Members are free to express their views. But, this particular matter of the Judges' salaries and allowances is protected by the Constitution and it cannot be derogated to their disadvantage. Sir, these days, judiciary is doing a very important task of protecting civil rights, human rights and disputes between the citizens and the State. Having regard to the importance of the institution, I submit, the House should be generous in dealing with this. I, therefore, Sir, request that this Bill may be considered.

The question was proposed.

SHRI ARUN JAITLEY (Gujarat): Mr. Deputy Chairman, Sir, the hon. Law Minister has moved the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2009. Sir, I rise to support this Bill. And, I support this Bill primarily on the ground that in these days of inflation, the cost of living having gone up, salary structures, first in the private sector and now in the Government sector, have substantially changed. One of the objects in altering the salary structures really is, as the economy also grows in order to give to all those who are the recipients of those

salaries and service conditions, the benefit of an improved quality of life which they can get on those salary structures. In the case of Judges, when we are improving their salary structures through this legislation, it's also an occasion for us to ponder over the situation as far as the institution is concerned. I am, Sir, conscious of the fact that the privileges we enjoy as a Member to speak on the subject also requires an in-built restraint with regard to certain inter-institutional courtesies that various organs of the State have to maintain when they discuss the performance and functioning of each other.

Sir, in this country, we function on one of the basic tenets which is the separation of powers. The concept of separation of powers essentially has conferred upon the judiciary in India the power to adjudicate disputes and also a very important power of judicial review is concerned. There has been a serious concern in the society that when all our institutions function, none of them tries to encroach upon the functioning of the other and, therefore, there occasionally has been a comment and suggestion when we find that the limits of activism at times cross the *lakshman rekha.* But, then, there is no division which is possible. The only division which is possible is by the institutions themselves acting in restraint and by acting in restraint, some element of statesmanship is also required that is fully conscious of what the functions of the Executive and Legislature are, the courts also take adequate care to make sure that they don't overstep.

Sir, the argument is normally given to the extent that what does a judicial institution do at a time when other organs of the State don't perform their functions. And this argument has been used to support this contention that an overreach in such cases has to take place, otherwise, there would be a void as far as the constitutional set-up of the society is concerned. But, this argument has also certain dangers. Nobody can be allowed to contend that arrears are mounting up and therefore, there has been some inadequate performance at some levels even by our judicial institutions and somebody else can start performing those functions. If any of the organs of the State Government do not perform their functions, then they have to be pressed into action to perform their functions. Any of the other constitutional agencies do not take over the functions of the other organ and start performing them, and therefore, when we discuss the performance of our own judicial institution, this is one restraint in terms of statesmanship, avoidance of any form of overreach, at the same time, making sure that the judicial power of review is adequately exercised which the court will have to really bear in mind. Sir, when we are particularly increasing their salaries and increasing the salaries significantly, I consider it a welcome step, a welcome step for the reason that judicial offices have to be made to appear to be attractive, people have to be incentivised to go and get elevated and get into those attractive offices. If those adequate incentives are not provided, the best within the system will not be incentivised enough to go and occupy those offices, and this is already one problem which the judicial institution in this country is facing. We have a judicial set up which is broadly independent;

we have a judicial set up which is broadly fair; we have a judicial set up which is powerful, but, at the same time, if we consider some of the problems which confront the institution, one of the serious problems is with regard to the quality of persons who occupy these offices. Historically, the best within the system were incentivised to occupy those offices. As the system proceeded, we have now found a situation where that incentive is lacking, and even from amongst members of the Bar, the best within the system are unwilling to get elevated. The most competent amongst them are unwilling to get elevated, and therefore, the incentive to occupy those offices is lacking, and when this incentive is lacking, how do we re-think about the system within which we are able to appoint the very best because ultimately, the quality of the institution will have bearing on the kind of faith people have within the system itself? It is extremely necessary that institutions like the judicial institution, institutions like the Parliament, remain objects in which there is a popular faith in democracy. If people start losing faith in the judicial institutions or in the Parliamentary system, the very fundamentals of our democracy get weakened, and this country cannot afford to fall into that sort of a situation, and therefore, we need to improve the system wherever we feel a problem has arisen.

Sir, today, when I speak in terms of quality, there has been a great debate going on as to what the procedure of appointments should be as far as the judges are concerned. Conventionally, we followed a system where the Chief Justice of India would send his recommendations to the Government, and after certain element of consultation, the Government would decide whether to appoint them or not. But inevitably, the Government followed the advice of the Chief Justice. Till 1982, when this was crystallised and a sanction was given judicially to an opinion by a narrow margin of a divided court that the last word is really of Government, this was then re-considered and post 1993, we are now living in a situation where effectively in India, it is the judges who appoint judges. In India, it is not the President, acting through the elected Government, who appoints judges. They may be formally involved in some procedure of consultation; they may be the executive appointing authorities but the functions performed by the Government now in matters of judicial appointments have become most minimal and the predominant word is of the judicial institution. In 1998, we corrected it further through judicial pronouncement again, and it was not only the Chief Justice of India who is appointing the judges, but the Collegium came up. Now, two observations have to be made. On the basis of this Collegium functioning in the last 10 to 11 years, the entire process of consultation has become extremely slow, and while it has become slow, you will always find that about 25 to 30 per cent of judicial posts in the higher judiciary of this country, particularly at the level of the High Courts, are vacant.

Each High Court would have five to seven to eight vacancies. The normal strength of the vacancies, at any given point of time, in the national High Courts, taken together, is anything

between 150 and 200. The process of consultations has become very slow. You know the date when a judge is going to retire. His retirement date is known on the date of his appointment itself, and, therefore, the requirement, really, is that six months before he retires, the process of appointing a successor should be set into motion. But, inevitably, this does not happen. Therefore, it is collectively that you appoint. And, one of the reasons why collectively you appoint is that the Collegiums, now, represent the collective wisdom. And because Collegiums recommend the collective wisdom, and too many minds go into this whole process, individual preferences, objective views, and also subjective views, about persons also get into it. The question that we have to pose and ask ourselves, after ten years of the Collegiums having functioned, is: have we been able to improve the quality of judges we are appointing in this country? And I have no hesitation in saying 'there is no improvement in the entire process of judicial appointments that we are making in this country!' How do we, then, improve upon the quality? That is a fundamental question which arises before us. To the question 'who has the last word', I think, earlier, the Executive had the last word; then, the Chief Justice of India had the last world; now, the collegium has the last word. The real issue has now altered from 'what was the debate', which has been conventionally going on, from 'who must have the last word', to the real issue 'as to what is the criterion on the basis of which you appoint judges'. Is the criterion going to be entirely subjective? Because the Collegium's decisions cannot be called into question by the Government, the Government can only refer it back once, and if the Collegium, again, says, "No. We insist that he be appointed", he would be appointed! My suggestion, therefore, is that we seriously reconsider, now, can we think in terms of a criterion by which the quality of judicial appointments can be improved? In all the systems we have followed till date, systematically, the quality has been coming down. And the quality has been coming down because subjective opinions about individuals have taken precedence over the objective criterion on which the judges must be appointed. There can well be situations where five judicial appointments are to be made in a high court; instead of appointing the best five who are available, you may pick up somebody who doesn't fall in the first one thousand, and it is not whether under this Government or under the previous Government. I am personally aware of cases where the selected ones are chosen, and once a person is chosen, he remains in office till he retires. Removal, in this country, has almost become unknown. And, therefore, the damage that can be done is, the office can either mature you; the office can also provide you immunity from any form of criticism. If a person with inadequate abilities is elevated, then he is capable of becoming even a burden on the system. So, my suggestion would be that the hon. Law Minister, at some stage, should consider a debate as to whether the discretion available to the Collegiums can be restricted by legislative changes. And when I say that the discretion available to the Collegiums must be restricted by legislative changes, what I, specifically, have in mind is that now, with the entire records and the functioning of our judicial

system having become computerised, the objective details of a person who is considered, must be available what are his academic qualifications; what is the kind of experience he has at the Bar; how many cases he has argued and how many cases that he has argued, are, actually reported; in how many cases he has got the law altered or laid down.

What is the number of youngsters that he has trained under him? What is his income, here is a potential available. In Government, every time when a number of vacancies come up there is some threshold of qualification. Today we have a situation before the Collegium where there is no threshold of qualification. If five people are to be appointed, the candidate on merit at No. 1000 can be chosen and appointed. It can't be called into question before any court. The Government can, at best, return it once. It can't be criticised. That is the system under which we function. Therefore, the real question, if we look at the declining quality of the appointees, as far as judicial officers are concerned, is that we must now seriously start a debate whether the discretion of the Collegium must be regulated by objective criteria with regard to the kind of persons that the Collegium select. Amongst the short-listed people, the Judges certainly are best equipped to know as to what is the integrity level of a candidate, how he will particularly perform as a Judge. Some element of discretion would always be available to them. But when they enter into the zone of consideration, there must be some threshold that they have to cross. Otherwise, I am afraid, we will not be able to improve the quality of judicial appointments and the quality can't be improved by merely altering the question. So far – I include myself as part of that responsibility – we have, in the last 25 years, debated the principal question: Who should appoint Judges? The real question is: What are the criteria on which a person is appointed as a Judge? I think, even under the present system, it is these criteria which now require to be seriously brought in.

Secondly, when we speak in terms of improving the quality of Judges, the issue of accountability also is extremely important. Normally, courts are not criticised within our kind of system. Public debate on the functioning of individuals is discouraged. Contempt laws are there. Unless you are pushed to an extreme situation, normally, you don't bring out these issues for a public debate because you don't want to bring down the popular faith, as far as the institution is concerned. I read the statement of the hon. Law Minister. I think he made it yesterday. He said it earlier also. There is an extreme position which is the impeachment process. Now, the impeachment process is exercised in the rarest of the rare cases. It can't be utilised in every case. I do hope that such situations don't arise that we have to use it frequently. But then short of that, certain checks and safeguards are required. There are issues of complaints. There are other issues. After all, institutions are manned by men. It is not that they are always infallible. Some men are bound to make mistakes and let us not forget the fact that the entry into the judicial institution brings out a sense of fairness and sense of responsibility in any entrant into that institution, in a very large number of cases. In some cases the immunity which a Judge enjoys can actually work adversely, if his individual moorings, integrity and

fairness are not of the best quality. Now, in such cases the Judges, so far, have followed an in-house mechanism in resolving these issues. The in-house mechanism has worked in some cases and not worked in other cases, and the tendency also does exist that unless pushed to an extreme the in-house mechanism doesn't work. Too many cases need not be brought into the mechanism because that will again bring a very bad name, as far as the institution is concerned. So, the hon. Law Minister is quite right when he says that the in-house mechanism is where he has not succeeded. Therefore, you require some kind of an institutionalised mechanism which will go in these questions of serious misdemeanours when they arise. The extreme situation is impeachment and we have the Judges' inquiry legislation. But what happens in all other cases? We have an issue of the Punjab High Court which has been hanging fire and it has almost become a matter of public debate. We have another issue where some hon. Members of this House have submitted a memorandum to the Chairman. Do we have a mechanism which exists today which commands popular confidence? I humbly submit that such a mechanism really does not exist. I have one area of difference with the hon. Law Minister that when such mechanism is created by the legislation that he has proposed, this must essentially be a judge's own mechanism. If it is a mechanism of only the judge's, then the only change that comes about in such a mechanism is that the present informal mechanism which is functioning becomes a statutory mechanism. The structure of that does not change. It acquires a little bit of a statutory form. What do standards and norms of public accountability require? When there are serious complaints and the matter needs to be inquired into, can it only be left to the in-house mechanism, whether it is statutory or non-statutory? Therefore, some element of participation is required; it may be minority participation, but it has to be in the nature of a public participation. The law will have to be structured. The National Judicial Commission, which was suggested earlier, had predominantly a larger number of judges; the majority was judges. Then two of the members suggested were, one nominee of the Government; the Law Minister would be best suited for that purpose and the second person, an eminent citizen could be appointed by a Collegium comprising the Prime Minister, the Leader of the Opposition and the Speaker, Three of them appoint a very eminent public man who enjoys very high credibility level to be a party to it. It is this participation which will ensure that fairness is done to the person against whom the complaint has come, and fairness is also done in the matter of looking into the allegation of the complaint. Such a mechanism even from the point of view of judges will carry a much higher credibility level. Today, when we are having a debate in the House with regard to improving the quality of the judicial system, and this Bill which seeks to increase the salary by two-and-a-half to three times, in fact, it is one of the good steps in the right direction because it incentivises and makes the office more attractive so that the best talent within the system gets attracted to it. These are some changes and reforms which are required in this particular matter. There are a large number of issues such as arrears; how the courts must function; what changes the Government can bring about, etc. Since they have been debated, I

am not referring to them. But I have these two suggestions to make with regard to the appointment process and with regard to the inquiry into the misdemeanours. With these words, I support the Bill which the hon. Minister has brought as a step in the right direction. Thank you.

SHRI SHANTARAM LAXMAN NAIK (Goa): Mr. Deputy Chairman, Sir, I stand to support the Bill moved by the hon. Law Minister on the subject of increasing the salary of high court and the Supreme Court judges. I would say that whenever such Bills have come before the House, Members have been kind-enough, gracious-enough and with all broadmindedness, they have never, never opposed any such legislation. That is because the judiciary or judges deal with very diverse problems, including human problems, where fate of husband and wife is decided, fate of mother and child is decided, matters worth crores and crores of rupees are decided by the judicial officers. Even the counsel who argues before them, his five minutes salary will be ten times more than the monthly salary of the presiding judge. This is the situation. We cannot compensate or bring everything at par. I would not say that it should be done because of the Sixth Pay Commission or because of inflation; even otherwise, the salary of judicial officers must be on a very, very high pedestal.

You cannot even compare them with others. This is my point. Similarly, we have to look after salaries and perks of the Lower Judiciary. Of course, fundamentally, the State Governments will have to deal with this. But the status of the Lower Judiciary, the Civil Judges, District Judges and Additional District Judges, is not favourable. This is especially true in the case of Judicial Magistrate First-Class. The Judicial Magistrate First-Class may convict a person or may acquit a person. But, when a person is acquitted, he will travel in the same public transport used by the Judicial Magistrate. Perhaps the person, who is convicted and whose sentence has been suspended, will also travel in the same public transport. You can imagine the plight of the judicial officer travelling in a public transport together with them. Today, the powers of Civil Judges or Senior Judges are quite high in their respective jurisdictions. Judgements are passed with large consequences. Therefore, we should also take care of their salaries and perks. Sir, judges stand on a high pedestal, as I said, and the judges are held in high esteem. We, the politicians, also hold the judges in high esteem. But, sadly speaking, it is not true *vice-versa.* We are looked at with contempt. You might have seen the various observations and remarks made by the Judiciary outside. We are not treated in a fair manner. I would like to bring this to the attention of the hon. Law Minister and request him to do whatever is possible on this matter. In fact, some time back, it was reported in reputed newspapers when the Judiciary seemed to have remarked, "What was Parliament doing? Were they sleeping?" These were the words used, and we did not do anything about it. Day in, day out, we hear such remarks against politicians, be it the MLAs or the MPs. If you recollect, Sir, the railway pass of some ex-MP was cancelled by a judicial pronouncement, and then Parliament had to bring in some legislation or,

perhaps, they had to modify some rule to regularise it. This is the treatment that we get. However, the year 2008 had not been a very pleasant year as far as the Judiciary is concerned. Various allegations of corruption have been made. Of course, there is a procedure to go into it. I will not go into it in detail. But there is a demand from the Bar Association of India that it should have a statutory role, like the one in the U.S., while dealing with such matters. Somehow, some restraint or some kind of a curtailment can be there in this Bill. I really do not know how it can be done. But this is a thought-provoking statement that there must be a statutory backing for regulating these things.

Then, I fully agree with the views expressed regarding Collegium. Earlier, the power was with the Government. Then, the Chief Justice assumed powers. Now, we have the Collegium on the appointment of judges. But let there not be an impression created that Collegium involves rotation. If this has to be avoided, then, a suitable legislation, laying down criteria in the matter of appointment of judges, should be brought about. This will bring transparency in the matter of appointments. Now, the question whether the Collegium's word is final or, the Government's word is final, or, the word of the Chief Justice is final, has to be decided. But a proper legislation will bring about transparency in the matter.

Now, the issue of encroachment is a sensitive one. The Prime Minister, Dr. Manmohan Singh, once said, in a polite manner, "Judiciary should not breach the constitutionality of demarcated boundaries."

But the reply given by Judiciary was that they did not encroach upon any matter unless the Legislature failed to act. Now, Sir, if the Legislature fails, does any other organ of the Government have the power to pass or amend a law? Who has given such a power to any other organ of the State? I would repeat the argument which I have been making and which has been referred to by my colleague here; in case, tomorrow, the Executive says that, because thousands of judgments are pending in the Supreme Court and in High Courts, the Prime Minister would pass the orders, or, similarly, the Chief Ministers of States would say that since judgements were pending in the High Court and the Judiciary was not doing its duty, he would pass the order, what would happen? Can this logic survive? And if this logic cannot survive, the other logic also cannot survive. Therefore, each organ has to have its own restraint; they have to understand what their respective powers are. Today, laws are created more through interpretations. If you see the law that exists today in the form of judgments, it is much more than the laws that we have passed. It is ten or 20 times more. As a result, it is very difficult to comprehend what the law is in a given area. Therefore, this sort of increasing encroachment has to find some way. It is not an exaggeration, but I will not be surprised if a day may come when courts of law will pass order to the Presiding Officer of this House or the other House saying that the court restrains the Presiding Officer of this House or the other from admitting a Calling Attention Motion or a Question, or from admitting a discussion.

In our rules, Sir, we have to amend or delete that rule which has existed for all these years. That is an anomaly. We normally say that matters pending in courts cannot be taken up in the form of a question, etc. There are many public matters which have to be discussed. But there is this rule which says that matters pending in courts cannot be discussed. So, somebody can make use of this clause and can restrain us. Since most of the matters which are discussed today are pending in courts of law, this rule should be deleted from the Statute Book to avoid any controversy because ultimately we will have to because of Public Interest Litigations. Most of the matters that we discuss are subject-matters of courts in some form or the other. Therefore, Sir, we have to delete that particular clause. Now, Sir, in order to bring transparency in the functioning of the Government, the Government of India has graciously enacted the Right to Information Act. No Department can dare to refuse information. Whenever information is denied, they go in appeal and the appellate authority decides it. A very fine and transparent procedure is there. Every Government department follows it. But, what about the Judiciary? It does not. When the Central Information Commission passed an order that this Act applied to Judiciary also, what has the Supreme Court done? The Supreme Court has challenged the order of the CIC in the Delhi High Court. Tell me, Sir, what would be predicament of the Judge or the Judges who decide against the Supreme Court because it is the Supreme Court which is the aggrieved party, which has brought it before the Delhi High Court saying that it is aggrieved and the CIC's order should be cancelled.

Now, what is to be done by the Delhi High Court, I don't know. Supposing, this matter ultimately goes to the Supreme Court, either way; who will be deciding? The Supreme Court will be deciding. Initially, who was the applicant? It was the Supreme Court. Now, how is it to be resolved? Mr. Law Minister, Sir, you have to find some answer to it. You have to protect that legislation, and see to it that judges themselves do not decide this matter, or, you have to amend it and make a clarifying clause, as it is, by Parliament that it will apply, irrespective of this thing, to the Supreme Court also. Let it be said in clear terms, so that everything is resolved. Thereafter, if they will strike down the clause, I don't know. That is possible. Even if you put a clause that it shall apply to the Supreme Court, they may strike it down. That is possible. They are the supreme.

Now, Sir, secondly, I would like to say that nowadays judgements are going against legal literacy. What I am saying is, every citizen has to know the law of the land, the fundamental laws. But, if you see the trend of the courts, they write long, long judgements, and to find out what is their pronouncement, it takes a lot of time. As a result, the task which our Law Ministry is doing today to spread legal literacy, these judgements go against that. The laws are to be made simple. As it is, the legislations which pass, sometimes are complicated. If you interpret judgements of thousands of pages, it gets further complicated. Therefore, the common citizen does not have the access to the

knowledge in regard to what a law is. Sometimes, Sir, I feel that in the age of computerisation, now, whether it is possible to do it. We have to examine it, because if certain propositions of law are decided from time to time, there can be a software by which the facts of the case are put in the computer. The proposition of law, as decided earlier, can be put; and बटन दबाओ जजमेंट पाओ। In this way, the judgement can come out. Can we go into such a world? I mean, that is not a bad idea, Sir, because human discussion is going astray these days. When human discussion going astray, let us resort to this, Sir, that a software can be developed by which facts and laws are fed in the computer. Thereafter, a judgement can be sought from Mr. Computer on this occasion.

Then, Sir, I am coming to a slightly different but a related matter. As far as the Election Commission is concerned, we have got article 324. During the entire period of election, everybody has experienced it now that there does not exist any Judiciary. Why I am saying this is because all the petitions related to it are to be decided after elections. There are so many orders which are passed by the Election Commission purportedly to be under article 324. They write letters day-in-day-out purportedly to be law, and if it violates any of my fundamental right or any other law, I have no remedy. The courts also give sanctity to such letters which are said to be judgements. They ask the Chief Electoral Officer to follow them. Everyday they will be writing letters now purportedly under article 324. Can you find some solution to this, Sir? It is very, very essential because those who contest elections or those who work or assist them become very, very helpless to get these letters, which are written from the Election Commission, asking them to do this and do that. They will just forget about the Representation of People Act, they will forget about the constitutional provisions, and they will write letters, which, according to them, is the law of the land. During those three weeks, nobody can do anything about it. Therefore, Sir, something has to be done in that context too.

Lastly, Sir, I would like to touch a small issue relating to my State for the consideration of the hon. Law Minister.

We had in Goa what is called Judicial Commissioner's Court, it was a High Court. That court had full powers of a High Court. Absolutely, it was not a bench of any court, but a full-fledged High Court. Before, we were under the Portuguese regime, when we had a High Court and the jurisdiction of our Goa High Court during the Portuguese regime extended overseas to other countries, to other colonies of Portugal. This was the status of a High Court which we had. Ultimately, when we became a State, we were given a bench of the Bombay High Court. We were entitled for a full-fledged High Court. But, we were given a bench of the neighbouring High Court.

Now, technically it is a fulfilment of a Constitutional requirement. They club together several States and they give one. The State was entitled for a High Court, but a bench was given. But, the Government of India should now consider, after several years, the demand of Goa for a full-fledged High Court.

Secondly, Sir, despite the fact that we had a strong judicial background, a very good High Court, I do not know if there can be a State-wise representation in the Supreme Court, but I would say, Sir, Goa judicial officers, Goan lawyers must find a place on the bench of the Supreme Court of – India. It is essential, Sir. Please consider these demands. Thank you.

SHRI P.R. RAJAN (Kerala): Thank you, Mr. Deputy Chairman, Sir. First of all, I welcome and support this Bill presented by the hon. Law Minister – The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2009. I welcome and support this Bill because considering the hard work and the number of cases to be dealt with by the judges and the responsibilities that rest on them, it is highly and absolutely necessary to revise the salaries and allowances and conditions of service of the judges. It is reported that there are more than 50,000 cases pending in the apex court itself. So, it is highly necessary to appoint more judges to dispose of those cases. We must ensure that all citizens who approach the apex courts must be delivered with justice in a speedy manner. Justice delayed is justice denied.

But, Sir, I think, I must take this opportunity to share some thoughts on the judicial system, especially the appointment of judges and to decide their service conditions. My party, the CPI(M) strongly believes that the Parliamentary democratic system of our country, as well as the executive, public and the judiciary must be given a role in appointing judges even in the higher courts.

Recently, a healthy and open discussion has been initiated. It has been reported in the newspapers on the functioning of the judiciary. The Chief Justice of the Supreme Court, the Prime Minister, the Lok Sabha Speaker and many leading citizens of the country had taken part in this discussion. Sir, I would like to bring to the attention of the House that the CPI(M), when raised certain criticisms against the shortcomings and weaknesses in the functioning of the judiciary and against the approach of certain judgments of the Supreme Court and the High Courts, a section characterised the criticisms as an attack on the judicial system.

There are reports that a section of the Judges is corrupt. The dispute is only about the percentage. There are allegations that some Judges are showing favouritism and some are insufficient.

Sir, I would like to bring to the notice of the House a recent letter of the Chief Justice of India, Justice Shri K.G. Balakrishnan's, addressed to the Chief Justices of High Courts, and it has been widely reported in our media, that those Judges who do not have the acceptability of the trust of the people, it will be appreciable if they themselves leave the position as a Judge.

Sir, judgements ignore the interests of the poorer sections and oppressed and restrict the efforts to ameliorate their conditions by social intervention. Some judgements ignore the interests of the common people by their complete surrender to the globalisation philosophy.

Sir, the method of appointment of Judges is also a matter to be discussed. In India it is not open to public scrutiny and lacks accountability and transparency. Even a reasonable criticism against a judgement can be branded as contempt of court as per the provisions of the present law. Perhaps, it is only in India that Judges are appointed by Judges alone. In India, till 1993, Executive had a role in the appointment of Judges. The nine-Judge Bench with the majority of the seven, by an innovative interpretation of the Constitution, took over the power of appointing Judges in its own hands. This came in the background of a weak Executive at the Centre. It held that the recommendation for appointment of a Judge should be made by the Chief Justice of India in consultation with his two senior-most colleagues and that recommendation should be given effect to by the hon. Present. As regards the method of appointing Judges by Judges itself it is a challenge to the four-pillar democratic system of our country. The collegium Judges who appoint the Judges may help in creating a coterie in future. It can also lead to the appointment of friends and relatives of the collegium Judges.

The 1993 decision was reaffirmed in a unanimous opinion rendered by a nine-Judge Bench of the Supreme Court in 1998 on a reference made by the President under article 143 of the Constitution. The method of appointment of Judges by Judges themselves poses challenges to the democratic system. The present system is incapable to appropriately address the diversities of India, and is not open to public scrutiny and lacks accountability and transparency. The system of appointment should be transparent and subject to public scrutiny. The public should be given an opportunity to express their views on the names nominated for the post of a Judge.

The present law on contempt of court and the system of trial is inherited from the British feudal system. A common man has a right to approach the court against slanders and libels. In a democratic system it is not appropriate to give more powers to the Judges than what is open to a common man. The system of insulating the judiciary from public scrutiny and opinion with the threat of contempt of court is unjust and dangerous in a democratic system particularly in our country.

The second Administrative Reforms Commission headed by Veerappa Moily has recommended to the Government in January 2007 to constitute a National Judicial Council having the representation of the executive, legislature and judiciary for recommending names of the judges for appointment and to decide their service conditions etc. of Supreme Court and High Court Judges for enquiry into the misconduct, for imposing penalties and recommending removal of judges also. My party has recommended the constitution of a National Judicial Commission with representatives from the three organs of the Government, - Executive, Legislature and Judiciary - representatives of the Bar Association and the general public. The Commission should be vested with powers to make recommendations for the appointment of judges, to conduct enquiries into the misbehaviour of judges, to impose minor punishments and to recommend to the President for the removal of judges

for misbehaviour and incapacity. Before concluding, Sir, I would request the House and the Government that the basic nature of democracy should be made applicable also to the appointment and to decide the service conditions and to fix the salaries of the judges also. Once again, Sir, I support the Bill.

PROF P. J. KURIEN (Kerala): Sir, the independence of Judiciary is paramount for a healthy democracy. I support and I welcome this Bill which seeks to increase the salaries of judges. When the cost of living has gone high and the salaries of the bureaucrats have been increased there is adequate justification for asking such a Bill. Furthermore, as it has been already pointed out, there are very eminent advocates who are having lucrative practice and those advocates are not prepared to be elevated to the Bench because, for example, Mr. Ram Jethmalani is here, such a senior advocate, a man getting such a...

SHRI RAM JETHMALANI (Nominated): No one has ever offered me the post of a judge. I have not been found respectable enough.

PROF. P. J. KURIEN: You are a luminary in that field. Even Arun Jaitley who was speaking here, see, so many good advocates are there but they do not go to the Bench. The reason is very simple. If you go to the Bench, the income and salary is less. You can get ten times or even hundred times more income by being a good advocate. So, the increase in salary is nominal. *(Interruptions)* The hon. Minister who is also a good advocate refused to become a judge. So, therefore, I welcome this Bill and I have no complaints even if judges are giving little more. Having said that, I have to respond to my previous speaker. I have to say that we have an experience in Kerala where the judiciary has come to our help when there are mass struggles and agitations, especially States' sponsored *bandhs* and agitations. The previous speaker, my good friend said that judiciary should not give judgement against mass struggles and mass agitations. I did not want to bring this point but because he spoke, I have to speak. We have in our State experience where *bandhs* are sponsored by the State, where nobody will be allowed to move even if they call it *hartal.* In effect, it will be *bandhs.* Pregnant mothers who want to go to hospitals for delivery are not allowed.

Those who are suffering from accident or if an accident took place, they are not allowed. If a person is about to die of heart attack, he is not allowed. In every bandh, 2, 3 or 4 people die in our State. What is the remedy? Sir, the remedy is available only from judiciary. Our High Court has given a judgment that there shall not be any *bandhs,* because *bandhs,* especially State-sponsored...

SHRI P. R. RAJAN: Sir, the court has not said like that. ...*(Interruptions)*...

PROF. P. J. KURIEN: If *bandh* is allowed, it also curtails the Fundamental Rights of citizens. It is my right to walk. It is my right to work. In our country, a few people want to undertake strike. They can do so. Why should they oppose others doing work? Same is the case with Parliament. Suppose,

50 Members want to create problem, they can create problem by walking out of the House. Why should they block or interrupt the entire House? Therefore, judiciary has taken a welcome step by intervening and protecting the rights of citizens by banning *bandhs* and giving a verdict against mass agitations. The important thing is that the law has been upheld. The judiciary is upholding the law. So, I welcome that. Sir, *bandhs* or *hartals* may be either State-sponsord or whatever it is, but, at the same time, every citizen has a right and that right has to be protected. If the Government do not protect it, it is the duty of the judiciary to protect it. That is what I wanted to say.

The second point is: Sir, my friend has said about the 'institutional courtesy.' It is correct. My friend, Shantaram Naik has already said it. No institution has to cross the *Laxman Rekha.* Neither Parliament should step into the realm of judiciary nor should judiciary step into the realm of Parliament. But, unfortunately, in certain judicial pronouncements, there are unnecessary interventions about the whole lot of politicians. If one politician is found guilty by courts, it is only one individual. Everyone can be a politician. To some extent, every citizen is a politician, because he will have something in politics. And, if a judicial pronouncement says, 'all politicians are barred', it amounts to saying that all Indians are barred. So, this kind of crossing the *Lakshman Rekha* is not correct. I don't know how it can be stopped. Let the hon. Minister, who is an expert in these matter, give a remedy to it.

Sir, the next point is about judicial activism. Here also, I differ with my friend. My experience from what I read from newspapers and from others things, the judicial activism has helped the society in a number of cases. As has been said, 'how judicial activism helped?' I am not an advocate. So, I have an objective view. And, advocates have some subjective view. Since I am not an advocate, my view is a layman's view *i.e.,* objective view. Sir, from where the judicial activism came in. No doubt, when the State failed, judicial activism came in. Take for example, Public Interest Litigation. If my memory is correct, it is Justice V.R. Krishna Iyer who permitted the PIL for the first time in Kerala. And a number of PILs have helped to correct the anomalies in the society and to call the Government for action. I am not saying this way or that way or whether it is beneficial or not. So, judicial activism, *per se,* cannot be blamed. If the Government fails, what is the remedy? Now, you say, judiciary can interfere and correct if the Government does something wrong. If the wrong doings of the Government can be corrected by judiciary, a question can be put to them that a failure of judiciary can also be corrected by the Government, because wrong doing is also a failure. According to my personal view, the judicial activism has helped. There may be a few cases in which judiciary might have overstepped. But, by and large, judicial activism has helped and that is what I would like to say.

Then, Sir, what has been said about the process of appointment of judges is very correct. Judges appoint themselves! This is not good for democracy; this is not good even for Judiciary itself.

Therefore, as recommended by the Law Commission, certain suggestions are pending here. So, I would like to request the hon. Law Minister that this present process of 'judges appointing themselves' should be corrected and necessary law should be enacted in this regard. I have even spoken to some of the judges, who are personal friends of mine. They also personally told me that they also feel that this should be corrected. A very senior retired judge, from Kerala, personally told me that this process of 'judges appointing themselves' should be corrected. So, what I am saying is that even judges will also agree with this. But the system today is allowing them; so, they are doing it. Whose duty is it to correct it? It is our duty. It is the duty of the Legislature to correct it. Therefore, I request the hon. Minister to take necessary action in this regard.

Then, my friend has mentioned about an RTI case that has been referred to the High Court by the Supreme Court. And, he has criticised that. I think, by doing so, the Supreme Court has shown the best examples of conduct because the Supreme Court itself is a party in that. When this RTI case came before the Supreme Court – right or wrong, I don't want to say anything in this regard because I am not a legal luminary – the Chief Justice of the Supreme Court had taken a view. There will certainly be subjectivity in that. And, knowing that, the Chief Justice of India has left it to the High Court for judicial scrutiny and a judicial verdict. I think, this is one of the best examples of conduct one can show. How can it be criticised? Then, my friend doubts that if the Supreme Court has referred a matter to the High Court, what the High Court judges will do. They should take independent view that's why they are appointed there. If that question is extended — if the President makes a reference to the Supreme Court, can you say that because the President has made a reference to the Supreme Court, the Supreme Court will say what the President wants? Not at all. Our Judges, right from the lowest rung to the highest strata, are the men of character and integrity. Some of them may not be having integrity, they may be corrupt. But they are few. But I can say that most of our judges are men of character and integrity. There may be some corruption for which we have to take some action. But it is wrong to think that because the Supreme Court has referred the matter to the High Court the judges will be afraid of giving a judgement according to law and as per their conscience. I think, the Chief Justice of India has done a right thing by referring the matter, where he himself is a party, for legal scrutiny. He could have easily not referred the matter to the High Court and would have said that it was his own duty. But he did not do that. It is the highest example of democratic and judicial behaviour that even the Chief Justice of India is submitting his views to the High Court for legal scrutiny. This is what I feel.

SHRI SHANTARAM LAXMAN NAIK: What if they give contrary judgement?

PROF. P. J. KURIEN: As I said earlier, I am not a legal luminary. I am speaking as a layman. My view is also subjective.

Then, I have to make a request to the hon. Law Minister. I have written to him as well as to the Chairman of the Parliamentary Standing Committee also regarding the number of vacancies for judges that are lying there. Mr. Arun Jaitley says that these vacancies are always pending. What is the meaning of retiring the High Court judges at the age of 62?

What is the need? At 62 years, if they are incompetent, then, how can Ministers be there in office at 68-70-75 years? Then, most of us will also be incompetent. What is the justification for this? In fact, at 62 or 65 years of age, these judges will be more productive. When you appoint a judge, he is a new man. It will take 2-3 or 4 years for him to understand and deliver better judgements. When the time comes for him to contribute and deliver really good judgements, he is retired. Such experienced and talented judges will be made to sit at home and you will give him pension also. You will have to bring a new and incompetent person to the Bench. What is the need for this? So, there is a strong need for increasing the retirement age of judges.

Secondly, what is the need for having a difference between the retirement age of High Court judges and the Supreme Court judges? I don't understand this because in the Supreme Court, law matters and constitutional matters come, and interpretation of law also has to be done. For this you need a more alert brain. There, the retirement age is 65 years. And in High Courts, you ask them to retire at 62 years of age. There is no need for having a disparity in retirement age of judges of High Courts and the Supreme Court. I request the hon. Minister to consider this. This is not just my view. The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice has already recommended that this disparity should be rectified and the same has been recommended three times. I request the hon. Minister to seriously consider, approve and accept the recommendations of the Standing Committee. ...*(Interruptions)*... It should be increased and, in any case, both should be equal. The age-limit can be increased up to 68 years. In America, there are judges who are 70 and 75 years of age and they never retire. ...*(Interruptions)*... The Government has better wisdom. It can increase the age up to 68 or 70. The Government should decide this. It can increase the retirement age and, then, bring the retirement age of the High Court judges on a par with the Supreme Court judges.

Lastly, I would plead for the common man; the *aam aadmi* of our country. Sir, justice is very costly in our country. It is very costly. Sir, ultimate justice is acquired from the Supreme Court. I don't think, a Keralite, unless he is a millionaire, or, a Tamilian, unless he is a millionaire, or, for that matter, anybody from your State, unless he is a millionaire ...*(Interruptions)*... can come to the Supreme Court and file a case. The expenses for coming here, meeting an advocate, fees paid to the advocate, etc. are very high. There are some good advocates who will charge less fees and argue your case. There are very few such advocates. A hefty fees is charged, but the common man does not, ultimately, get justice. It is a fact. Then, what is the way out? We also want ultimate justice,

whatever may be the argument on the other side. Heavens will not fall if a Bench of the Supreme Court is set up in the South. It could be in Chennai or Mangalore. Heavens will not fall if a Bench of the Supreme Court is set up in East Kolkata or Bhubaneswar. And, heavens will not fall if a Bench of the Supreme Court is set up on the Western side. This is needed for getting ultimate justice for the *aam aadmi.* Sir, I know of some cases where the sentence is, 'hang till death', but, the accused says that he is innocent.

He cannot approach them because he does not have money. Even such cases are there, I know. But I do not know why our Judiciary and our leadership are not thinking about this. For giving ultimate justice to the common man, Judiciary should not be concentrated at one point. The Supreme Court should hold Benches in all these places.

Sir, one more point I would like to make. In Kerala, there is an agitation going on. It is my duty to bring that point to the notice of the House. That agitation is by the lawyers of Trivandrum. They are asking for a bench of the High Court at Trivendrum. They are also saying the same thing which I have said. It is my request to the hon. Minister to consider both these requests favourably and take appropriate action. With these words, Sir, I fully support this Bill. Thank you very much.

श्री वीरेन्द्र भाटिया (उत्तर प्रदेश): उपसभापति जी, मैं इस बिल का समर्थन तो करता ही हूं, हमारे प्रो. पी.जे. कुरियन साहब ने अभी जो कुछ कहा है, उसका भी समर्थन करता हूं। अभी श्री अरुण जेटली जी कह रहे थे कि एक लक्ष्मण रेखा कार्य पालिका और न्याय पालिका के बीच में होनी चाहिए। हम प्रायः सदन में और हर जगह यह बात कहते हैं कि न्याय पालिका कार्य पालिका के अधिकार क्षेत्र में अतिक्रमण कर रही है, उस लक्ष्मण रेखा का उल्लंघन कर रही है, overstepping in the jurisdiction of the executives. मैं एक बात जरूर कहूंगा कि न्याय पालिका जो कर रही है, उस पर आरोप लगाने से पहले हमें अपना आत्मालोचन भी करना चाहिए, अपने बारे में भी सोचना चाहिए और यह सोचना चाहिए कि किन परिस्थितियों में न्याय पालिका ने यह अधिकार अपने हाथ में ले लिया। आज तमाम ऐसे मामले हैं, जिनमें अगर न्याय पालिका ने हस्तक्षेप नहीं किया होता तो आज परिस्थिति दूसरी होती। आप दिल्ली में petrol or diesel से चलने वाले बसों से हो रहे pollution के मामले को ही लें। petrol or diesel operated बसों को कोई रुकवा नहीं सकता था? ...(**व्यवधान**)... लेकिन, जब उच्चतम न्यायालय ने निर्णय दिया, उसके बाद ही यह कार्य हो सका। रोज encroachment हो रहे हैं और मैं जानता हूं, मैने स्टेट् में भी काम किया है, बहुत सी बातों में सरकार खुद चाहती है, क्योंकि वह अप्रिय कदम नहीं उठा सकती, इसलिए इस प्रकार के आदेश अगर न्याय पालिका से हो जाएं तो अधिक उचित होगा। एक अनुतोष मिलता है एक कर्मचारी को और न्याय पालिका एक आदेश देती है, उसके बाद दूसरे मामले में कार्य पालिका कहती है कि अदालत से आदेश ले आओ, तब हम आपका काम करेंगे। तो, कभी-कभी न्याय पालिका की शरण में कार्य पालिका भी जाती है और यह चाहती है कि न्याय पालिका इस प्रकार के आदेश करे। ऐसा एक मामला नहीं है, तमाम मामले हैं। हमारे यहां उत्तर प्रदेश में कारगिल शहीदों के नाम से एक पार्क बना, पिछली सरकार ने, माननीय श्री मुलायम सिंह जी ने उसका लोकार्पण किया था, लेकिन कारगिल शहीदों के नाम पर बने पार्क के नाम को बदलकर उस पार्क का नाम ऐसे व्यक्ति के नाम से तब्दील कर दिया गया, जिसके बारे में शायद उत्तर प्रदेश के लोग नहीं जानते। एक रिटायर्ड कर्नल ने जनहित याचिका

प्रस्तुत की और यह आदेश हुआ कि उसका नाम न बदला जाए और वह सरकार उच्चतम न्यायालय में गई, तब भी उच्चतम न्यायालय ने आदेश दिया कि उसका नाम न बदला जाए। तमाम ऐसे दृष्टांत हैं, जिनके आधार पर हम यह कह सकते हैं कि न्याय पालिका अगर over stepping कर रही है तो उसके जिम्मेदार हम हैं, कार्य पालिका है।

(**उपसभाध्यक्ष (प्रो. पी.जे. कुरियन**) पीठासीन हुए)

एक बात मैं और कहना चाहता हूं कि मैं यह मानने के लिए तैयार नहीं हूं कि न्याय पालिका असफल हो रही है। यह बात ठीक है कि कुछ न्यायाधीशों के विरुद्ध उंगली उठ रही है, लेकिन फिर भी आज न्याय पालिका ने जिस प्रकार से, निर्भीकता और ईमानदारी से हमारे जनतंत्र की रक्षा की है, वह अनुकरणीय है। आप हमारे पड़ोसी देशों को देखें, वहां जनतंत्र समाप्त हुआ, क्यों? क्योंकि वहां न्याय पालिका अपनी सशक्त भूमिका नहीं निभा सकी। इसलिए, मैं कहने का साहस कर रहा हूं और जो पीठासीन उपसभाध्यक्ष जी हैं, उनकी बात से fully agree करता हूं, उनकी बात को endorse करता हूं कि न्याय पालिका पर दोषारोपण करने से पहले कार्य पालिका को स्वयं अपने को करेक्ट करना चाहिए। दूसरी बात कही गई, जजों की appointment के बारे में। वर्तमान में जो जज के appointment हो रहे हैं, वह ठीक नहीं है। मैं समझता हूं कि प्री एडवोकेट आन रिकार्ड मामले में, 93 से पहले जो नियुक्तियां होती थी, वह आज हो रही नियुक्तियों से much better थीं। आज आवश्यकता इस बात की है कि talent को जज बनाएं। आज ऐसे-ऐसे जज हो रहे हैं, जिनके बारे में हम नहीं जानते हैं। मैं चार बार बार-एसोसिएशन का अध्यक्ष रहा हूं। मैं महाधिवक्ता रहा हूं, लेकिन जज के लिए कभी-कभी ऐसा नाम आ जाता है, जिसके बारे में मुझे चिराग लेकर ढूंढना पड़ता है कि यह कौन-सा वकील है और इसकी कितनी वकालत है। इस आधार पर नियुक्तियां हो रही हैं। इसमें कोई शक नहीं है। इन नियुक्तियों को भी दो भागों में बांटा जाना चाहिए। एक Lawyers से होना चाहिए। पहले appointment होते थे, सबको मालूम है कि top most पांच Lawyers हैं - क्रिमिनल, सिविल। नंबर एक, इसकी integrity doubtful है। नंबर दो, नंबर दो ने accept नहीं किया। नंबर तीन एक ऐसा आदमी निकल आता है, जिसके बारे में मालूम ही नहीं होता है। मैं एडवोकेट जनरल रहा हूं, उस समय मेरे पास तमाम लोग आते थे कि साहब, सिफारिश कर दीजिए। मैंने किसी से कहा कि भाई, मैं तुम्हारी सिफारिश कैसे कर दूं, तुम योग्य नहीं हो। इस पर वह कहता था कि अगर फलां हो सकता है, तो मैं क्यों नहीं हो सकता? आज लोगों की धारणा हो गई है कि नियुक्ति मेरिट से नहीं होती है, बल्कि लॉबिंग से होती है। इसको रोकना चाहिए।

महोदय, मैं दूसरी बात Service Judges के बारे में कहना चाहता हूं कि Service Judges की जो नियुक्तियां हो रही हैं, उन पर जरूर विचार किया जाना चाहिए। जो Lower Judiciary से आ रहे हैं, उनमें most of the persons वें हैं, जो incompetent हैं और काम नहीं करते हैं। पहले District Judge आता था, तो कम से कम फौजदारी का काम करता था। आज डिस्ट्रिक्ट जज आता है और कहता है कि 20-30 साल काम कर लिया, अब चार साल के लिए हुआ हूं, तो अब भी मौज-मस्ती नहीं करूंगा और काम करूंगा। मैं एक को जानता हूं, अभी जेटली जी नहीं हैं, मैं उन्हें बताता कि उनके समय में एक डिस्ट्रिक्ट जज का appointment हुआ था। वह अस्पताल से oath लेने के लिए आए और उसके बाद फिर वह अस्पताल चले गए। वह अपने पूरे साढ़े तीन वर्ष के कार्यकाल में दस मिनट से ज्यादा किसी दिन भी अदालत में नहीं बैठा। अब वह रिटायर हो गया है। इस तरह के appointments को रोकना चाहिए।

महोदय, आपके साथ meritorious लोग तभी आएंगे, जब आप उनको अच्छी सैलरी देंगे और अच्छी सुविधाएं देंगे। मैं समझता हूं कि उसको देखते हुए ये सुविधाएं भी कम हैं, जो हमारे कानून मंत्री ने दी है। जब सन् 1950 में संविधान लागू हुआ, तो उस समय हाई कोर्ट के जज की तनख्वाह 3,500 रुपए थी। अगर आज हम 3,500 रुपए के purchasing value के हिसाब से जजों को तनख्वाह दें, तो कम से कम वह 3,50,000 रुपए होते हैं। ऐसा इसलिए था कि उनको कोई भी, किसी भी प्रकार का प्रलोभन लुभा न सके। उस हिसाब से सैलरी कम दी जा रही है। मैं माननीय कानून मंत्री जी से कहूंगा कि भारत के मुख्य न्यायाधीश के जो recommendations थे, उनको क्यों नहीं मान लिया? उनको मान लिया जाना चाहिए। साथ ही उन्हें और भी सैलरी देनी चाहिए।

महोदय, दूसरी जरूरी बात यह कहना चाहूंगा कि कम से कम जजों का स्टेट्स Cabinet Secretary से ऊपर होना चाहिए। आप चाहे उन्हें उनसे एक सौ रुपए ज्यादा दीजिए, लेकिन उनसे ज्यादा दीजिए। आज आपने सुप्रीम कोर्ट के जज को Cabinet Secretary at par कर दिया है, मैं समझता हूं कि यह उचित नहीं है। इसिलए अगर उनकी तनख्वाह 90,000 रुपए है तो इनकी तनख्वाह एक लाख रुपए होनी चाहिए। इसके बाद मैं कुछ और बातें कहना चाहता हूं कि इसमें कुछ शर्तें भी include होनी चाहिए, जैसा अभी हमारे पीठासीन उपसभाध्यक्ष महोदय ने कहा कि न्यायधीशों कर उम्र बढ़ाई जानी चाहिए। मैं समझता हूं कि यह बहुत आवश्यक है। अगर उच्चतम न्यायालय की न्यायाधीश 65 साल में रिटायर होते हैं, तो उच्च न्यायालय के न्यायाधीश 62 साल में क्यों रिटायर हों? जब उसमें maturity आती है, जब पूरा लाभ लेने का अवसर आता है और जब वह कानून को कुछ दे सकता है, तब वह रिटायर हो जाता है। लेकिन मेरी मांग है कि अगर हो सके उनकी उम्र 65 वर्ष से बढ़ाकर 67 वर्ष कर दी जाए, लेकिन साथ में एक शर्त हो कि रिटायरमेंट के बाद उनको किसी प्रकार का कोई जॉब नहीं मिलना चाहिए। इस पर संदेह की उंगली उठती है। मैं यह नहीं कहता हूं, लेकिन ईमानदार जज भी अपने फ्यूचर के लिए, अपने भविष्य के लिए, कहीं न कहीं, किसी न किसी प्रकार से प्रत्यक्ष और अप्रत्यक्ष तरीके से सत्ता पक्ष को लाभ पहुंचाने की कोशिश करते हैं और इसीलिए बहुत से मामलों में, बहुत से ऐसे फैसलों में जो रिटायरमेंट के कुछ दिन पूर्व आए, मैं नहीं कहना चाहता हूं, लेकिन उंगली उठी। मेरा यह कहना है नंबर एक कि उनकी उम्र बढ़ाइए, लेकिन यह शर्त रखिए कि उसके बाद किसी भी प्रकार का कोई भी कार्य वे स्वीकार नहीं करेंगे। यह भी चाहते हैं, तो एक शर्त और होनी चाहिए। हर जज को, चाहे सुप्रीम कोर्ट का जज हो या हाई कोर्ट का जज हो, सबको वेतन एक मिलता है, अधिकार एक हैं, तो रिटायरमेंट के बाद benefits अलग-अलग क्यों हैं? सर्विज जज जो कम काम करते हैं, उनको तो 40,000 रुपए पेंशन मिलती है और जो एक वकील अपनी वकालत छोड़कर आता है, lurcative practice छोड़कर आता है, वह अगर आठ साल के लिए आया, तो उसको 20-22 हजार पेशन मिलेगी। माननीय कानून मंत्री जी से मेरा एक अनुरोध है कि इस पर विचार करें और रिटायरमेंट के बाद भी सबको एक सा benefit मिलना चाहिए, सर्विस के हिसाब से नहीं। अगर judicial service से आए हुए व्यक्ति ने 20 साल judicial service की है, तो एक lawyer भी part of the judicial service है और उसको भी उसका benefit मिलना चाहिए।

दूसरी बात, उच्चतम न्यायालय में रिटायरमेंट के बाद कुछ सुविधाएं मिलती हैं, एक सेक्रेटेरिएट की सुविधा मिलती है और एक पी.ए. और एक चपरासी मिलता है, कम से कम वे सुविधाएं उच्च न्यायालय के न्यायाधीश को भी मिलनी चाहिए। रिटायरमेंट के बाद वे एक चपरासी की तलाश करें। जब मैं महाधिवक्ता था, तो हमारी सरकार के सामने यह प्रसंग आया। खैर माननीय मुलायम सिंह जी judiciary के लिए बहुत considerate थे, तो एक-एक

चपरासी की व्यवस्था की गई। इसलिए उनको allowance मिलना चाहिए, पी.ए. का भी मिलना चाहिए, जिससे वे रिटायरमेंट के बाद कुछ लिख सकें, कुछ पढ़ सकें, कुछ रिसर्च कर सकें और उसके लिए पी.ए. की आवश्यकता है। उसी प्रकार से चिकित्सा की सुविधाएं भी रिटायर्ड जजों को मिलनी चाहिए, जिस प्रकार से उच्च न्यायालय के न्यायाधीशों को मिल रही है। मैं कहता हूं कि इसमें सुविधाएं तो मिलें, लेकिन दो शर्तें इसमें जरूर include होनी चाहिए। एक तो मैंने आपको बताई कि वे किसी भी प्रकार का कार्य नहीं करेंगे। दूसरा, एक सुविधा माननीय कानून मंत्री जी ने जजों को साल भर में दो बार एल.टी.सी. की दी है। कुछ conscious जज हैं, जो छुट्टी नहीं लेते, लेकिन कुछ जज ऐसे हैं, जो वर्किंग डेज़ में ही घूमने के लिए जाते हैं। मेरा यह अनुरोध है कि अमेंडमेंट होना चाहिए कि एल.टी.सी. की सुविधा तब मिलेगी, जब वे छुट्टी के दौरान vacation के दौरान उसको avail करेंगे। अगर vacation के दौरान avail नहीं करेंगे, तो उनको एल.टी.सी. की सुविधा नहीं मिलनी चाहिए।

तीसरी बात थोड़ी सी off the track है। मैं एक बात कहना चाहता हूं कि जजों के appointment में specialisation का जमाना है। मैं क्षमा मांगते हुए कहता हूं कि ऐसा लगता है कि क्रिमिनल लॉ के सब लोग भूल गए हैं। Basic principles of criminal jurisprudence को जज भूल गए हैं, जिन्होंने कभी 323, 325 और 307 तक केस नहीं किया होगा, वे भी फांसी की सजा की अपील डिसाइड कर रहे हैं। मेरा कहना है कि उच्चतम न्यायालय, उच्च न्यायालय, हर जगह फौज़दारी के इतने मुकदमे आ रहे हैं कि उनके लिए फौजदारी के अनुभव रखने वाले कुछ वकीलों को भी जज जरूर appoint किया जाए। जब हम विभिन्न वर्गों की बात कर रहे हैं तो इस वर्ग का भी प्रतिनिधित्व होना चाहिए। वैसे तो मेरी राय है कि कॉंस्टीट्यूश्नल बेंच अलग होनी चाहिए और Appellate Courts अलग होनी चाहिए। उसमें भी Appellate Court of Criminal Jurisdiction अलग कोर्ट होनी चाहिए क्योंकि आज बकौल हमारे सीनियर श्री राम जेठमलानी साहब*

SHRI H.R. BHARDWAJ: Please take back your words. ...*(Interruptions)*... Ram Jethmalani ji can afford to say that, but you and me cannot.

SHRI VIRENDRA BHATIA: I am sorry. I take my words back. लेकिन मैं अपनी फीलिंग convey कर रहा हूं कि जो बात मैं देख रहा हूं, जो जजमेंट्स आ रहे हैं, उसमें हम सब देख रहे हैं - उनके आधार पर मैं यह बात कह रहा हूं। कहीं अगर पॉलिटिशियन आ गया, किसी के नाम के साथ पॉलिटिशियन जुड़ गया, फिर तो समझ लीजिए कि न्याय बड़ा मुश्किल हो जाता है।

अंत में, मैं एक बात कहना चाहता हूं। बहुत सी चीजें कही गयीं। यह बात सही है कि कुछ जजेज की वजह से न्यायपालिका बदनाम हो रही है। यह भी सही है कि जजेज को कुछ amenities मिली हुई हैं। यह भी सही है कि impeachment ही एक तरीका नहीं है। जब judicial misconduct होता है जो उसको डील करने के लिए कोई way-out निकलना चाहिए, जैसा कि लॉ ऐंड जस्टिस कमेटी ने रिकमेंड किया। लेकिन मैं एक बात जरूर कहना चाहता हूं कि independence of Judiciary बहुत जरूरी भी है। किसी प्रकार से प्रत्यक्ष या अप्रत्यक्ष तरीके से उस पर प्रहार नहीं होना चाहिए। जब हम Judicial enquiry की बात कर रहे हैं, जजेज की इन्क्वायरी की बात कर रहे हैं तो उच्च न्यायालय और सुप्रीम कोर्ट के जजेज को अगर किसी प्रकार का चाबुक उन पर महसूस होगा तो वे

*Withdrawn by the hon. Members

निष्पक्षता और निर्भीकता से न्याय नहीं कर पाएंगे। कृपा करके जजेज को सीबीआई इन्क्वायरी से बचाइए। मैं लॉ मिनिस्टर साहब को बधाई देता हूं कि इन्होंने खुले आम यह बात कही। इसमें कुछ जजेज ऐसे फंस जाते हैं जिनका चेहरा बिल्कुल पाक साफ है, जिनके चरित्र के बारे में बीस साल से लोग जानते हैं कि बहुत ईमानदार जज हैं। आप एक बात कहकर, जो उसने अपनी प्रतिष्ठा बनायी थी - उस जज के पास उसकी प्रतिष्ठा ही तो है - उसने जो अपना एंपायर बनाया था, जो उसकी पूंजी थी, आपने सीबीआई इन्क्वायरी कराकर उसके चेहरे पर दाग लगा दिया। मैं सिर्फ एक अंतिम वाक्य कहना चाहता हूं कि वैसे तो मैं इस बिल का समर्थन करता हूं, लेकिन एक बात लॉ मिनिस्टर साहब से जरूर कहूंगा कि ज्यूडीशियरी को तो आपने कुछ दिया, वकीलों के लिए भी आप कुछ कर दीजिए, उनके लिए भी इंश्योरेंस होना चाहिए। आज वह स्थिति नहीं है। या तो वकील बहुत ऊपर हैं जो दस लाख रुपए रोज लेते हैं।

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Advocates are getting very good fees.

SHRI VIRENDRA BHATIA: I don't agree with you. I know there is disparity. अगर दस लाख रुपए चार्ज करने वाले वकील हैं तो ऐसे वकील भी हैं जो पांच रुपए भी नहीं ले जाते। इसलिए मैं कहूंगा कि उनके लिए भी कुछ इंश्योरेंस की व्यवस्था की जानी चाहिए। इन्हीं शब्दों के साथ मैं एक बार फिर इस बिल का समर्थन करता हूं।

SHRI RAM JETHMALANI: Sir, I hate to be autobiographical, but I do wish to share with this House that I took my legal education in the 30s and I started my practice in the 1941. I took my legal education in those colleges and under those teachers who, day in and day out, impressed upon us that judges discharge divine functions.

It is the function of God to meet out justice to his creation, but, by the compulsion of society, we have to appoint some human beings to meet out justice. But, the functions, which they are essentially discharging, are the functions of God. Sir, I am not exaggerating, but, practically, all my professional life, I have devoted to supporting the dignity and the independence of Judges. And, Sir, look at the Constituent Assembly. What awesome powers did they confer upon our Judges - matters of life and liberty on criminal side; complete powers on the civil side, whatever be the property involved, whatever be the rights involved, whether it is ordinary property rights, or, intellectual property rights, complete sway over the avocations of people. But, Sir, the other power, which they conferred upon them was that Judges were made the guardians of the common man in this country. We are not merely a democracy. Our Constitution says that we are a Republic and a democracy. A republic is different from a democracy. In a democracy, the majority governs almost in every field. But, in a Republic, it is the individual citizen who is paramount because he is clothed with some inalienable rights which even the two Houses of Parliament acting unanimously cannot take away or abridge. If they do abridge those rights and liberties, the abridgement has to be justified in the eyes

of our Judges who have to decide whether the restrictions are reasonable or not. And, Sir, what is more, the Parliament represents the will of the electors of India. You make a law here in both the Houses; the President sanctions it. But, five Judges of the Supreme Court have the right to turn around and tell the President and the two Houses of Parliament that you have passed a law, but you have passed a law without understanding the basic law which you enacted some 60-70 years ago; we understand it better than you do, and they have the right to strike down that declared will of both Houses of Parliament supported by the hon. President. These are the awesome powers which the Constitution-makers conferred upon our Judges. But, they did so because they too were of the same opinion as my teachers that these Judges are agents of the divine power and they are discharging divine duties, and, Sir, look at the brilliant galaxy of Judges we had at that time either in the Federal Court of India or in the Supreme Court of India. Sir, one has to recall some of those names. I can say that they were Judges who could hold a candle to the best Judges in any part of the world. Sir, Judge like Kania Saheb, who became the first Chief Justice of India; Judge like Vivian Bose; Judge like Faisal Ali; in recent times, Justice Krishna Iyer, Justice Venkatachaliah, Justice Verma - these are the names to be mentioned and you get a sense of pride, you have a glow of pride when you think of these great Indian Judges. But, Sir, I agree with every speaker who has spoken before me, particularly with Mr. Bhatia. I do not know where he has gone now. It is unfortunate that standards have fallen. Standards have fallen to such an extent that it is, perhaps, true that on the criminal side particularly, judgements which were delivered 30-40 years ago by Presidency Magistrates in Madras, or, in Bombay, or, in Calcutta were better than the judgements which are now being produced in the Supreme Court.

And, what is more, it is unfortunate that some incidents have taken place and evidence has surfaced which has also cast a doubt upon the integrity of some of the Judges, not merely at the subordinate level. Chief Justice Bharucha publicly declared that twenty per cent of the Judges in the Higher Courts are corrupt. Sir, the people of this country are very anxious to know what the remaining eighty per cent of pure judges have done about those Judges, whom Justice Bharucha, perhaps, rightly described as corrupt judges.

Sir, look at the records. A Rajasthan High Court Judge and his Registrar sought sexual favours from a female doctor. A committee appointed by the Supreme Court found them guilty. The Judge only resigned. The Judge should have been in jail. No further action was taken. Some Judges in Mysore were involved in a sexual scandal. Nothing serious happened. A Judge of the Delhi High Court has been formally charged for corrupt dealings with property developers and the trial has not yet commenced for more than a decade. The case raises an interesting question. In receiving sexual favours, does a Judge receive illegal gratification? It is an interesting point, which, I hope, the Supreme Court will have to decide. Sir, this is the state of affairs. Sir, to my mind, because of the very nature of the functions which Judges have to discharge, they must be completely made above

want so that they don't have the slightest temptation, slightest envy with the richest persons who appear before them or whose interests and whose rights and obligations, they sit in judgement upon.

Therefore, Sir, now you have trebled their salaries; for all practical purposes, I think, it is little less than triple. If you had made it quadruple or even five times, I would have still supported it. But, Sir, the support should come from a realisation of the great dignity of that judicial office and the enormous value of the functions which these Judges perform.

I have a grievance against the Statement of Objects and Reasons of this Bill. What does the Statement of Objects and Reasons say? It does not talk of the great role of the Judges in our body politic. They are important but they are more important than even the Legislature and the Executive combined. They are the guardians of citizens against the arrogance and the corruption and the venality of power. And, Sir, this tribute should have been made in the Statement of Objects and Reasons.

SHRI H.R. BHARDWAJ: I will do it now.

SHRI RAM JETHMALANI: I have no doubt. Why do you think I am saying this? I know your views about Judges and I know what you really feel about them. But, Sir, the Statement of Objects and Reasons says that the Sixth Pay Commission has decided to give higher emoluments to the bureaucrats, and, therefore, this Bill is being brought. Now, this is unfair to our Judges in a sense. Of course, my friend's explanation will put things on the proper pedestal, and, I hope, the Judges will also have the satisfaction that they are being recognized by the Parliament of this country as being superior to the bureaucrats in this country, and, superior to almost everybody else in this country.

Then, Sir, what do you do about these falling standards? Let me tell you one instance of about four years ago. I have forgotten the exact date. I could not collect the exact date but about four years ago, Transparency International' and a Delhi-based 'Centre for Media Studies', a research firm, undertook study of corruption in India. The result published the same year said that Indians pay out more than Rs. 20,000 crores as bribes every year and scores of public servants at all levels are involved. The report made a number of very wise suggestions. At the same time, it made scathing observations about corruption in the judiciary. Speaking of the system being highly dilatory and expensive, which every Member has spoken about, it said that it provided a strong temptation to use some money to oil creating wheels. Lawyers, court officials and even judges were found to be recipients. I am not talking of the lawyers' normal fees. These are the fees for extra professional services. So, Sir, if this is so, and we ourselves have made a mockery of the only method of dealing

with the corrupt judges which the Constitution provides, namely, impeachment. Sir, Members of Parliament were active. Impeachment Motion was made. It was accepted. Three of the best judges of the country were appointed to inquire into the charges of corruption. The Committee found the judge guilty of 9 charges out of 12 which were framed against him. The Motion came here. Sir, by the sheer device of asking Members not to vote, the Motion failed because two-thirds majority could not be obtained which is required by the Constitution. But, Sir, let us look back upon it. What was Parliament doing? Let us do some introspection about this episode in our life why did we help a judge who was found guilty by his three brother judges and three brother judges of the highest reputation in the country. Sir, is it not a case of Parliamentary corruption coming to the rescue of judicial corruption? That is what has happened. Therefore, Sir, something more has now to be done. First of all, I don't believe that our selection process takes into account the merit of lawyers. Even income tax returns are not adequate proof of good character and good conduct or even professional competence. There are lawyers today who, I regret to say, I am ashamed of it, only do work of fixing things at the police stations. They get more fees than the lawyers who charge Rs. ten lakh in court because there the amounts are absolutely phenomenal and merely giving the income tax return to the Chief Justice and saying, "Look, this is my practice", is neither here nor there. There are various branches of our law – criminal law, labour law, income tax law, intellectual property law. Is there anyone who makes an analysis of the qualification of a person who wants to become a judge? No. Sir, let me tell you that I am facing this almost everyday. Fortunately, now I have at least decided to wind up my practice. But, Sir, literally, the life and liberty of people including sentences of death and life imprisonment are being inflicted upon citizens by judges who have never tried a simple hurt case in all their life. But, Sir, this can by remedied by judicial character. A judge in England was transferred by the Lord Chancellor from the Chancery court and put in the commercial court. He told the Lord Chancellor that I am not a great expert in commercial law, don't put me in that court. The Lord Chancellor said, "No, a judge should know every law", which is a myth. The law is so vast that all judges combined cannot know all the law. Law has to be learnt in every particular case with the assistance of the Bar. So, that judge went to the commercial court, where he was asked to go by the Lord Chancellor. The collected members of the Bar who were present on the first day before him, he told them, "Gentlemen, I must tell you that it is not fair that I should be a judge here. It is not fair to you that I should be a judge here. Let me tell you that I don't know anything of commercial law. I don't know why I am here. But now it is your duty to teach me law for the next three months. I assure you that I am a good learner and I will deliver my first judgement after I have received training from you lawyers for the next three months. The Press picked it up. The Lord Chancellor had to eat a humble pie and get the judge reverted back to the Chancery court. Now, this is how the things work, Ladies and Gentlemen. I assure you that my comrades, my colleagues, we don't display that character today. This report says that it is the duty of the Bar to expose corrupt judges.

Sir, I agree. It is the duty of the Bar to expose corrupt Judges. But, how many lawyers have the courage to do so? In Urdu, they say, एक सितम का दौर, सितम के दौर में वह अहले दिल ही काम आया, जुबां पे नाज था जिनको, वे बेजुबां निकले। आज हमारे वकील भाइयों और हमारी वकालत का यह हाल है। They have become sycophants and flatterers of some Judges than persons who will expose the faults of Judges. This, therefore, is not the function of the Bar today. There are some Judges and some lawyers who still speak their mind and speak bravely. But, they are few and far between and please don't expect all progress to come from that quarter. Therefore, Sir, the only solution of the problem of good appointments or removal of bad Judges is the creation of the National Judicial Commission. I regret to say that most political parties had got it in their manifesto once upon a time that we will create a National Judicial Commission. I, at least, remember that the BJP had written it in their manifesto at one time. That party has also done it. A National Judicial Commission in which the Chief Justice of India must be represented which means the judiciary should be represented, the Government must be represented, perhaps through its Law Minister, the Leader of Opposition must be represented, the academic world must be represented, etc.

Sir, I will pause here for a second. For a brief few months, I was the Law Minister in this country. And, Sir, some of the District Judges used to come to me. I freely entertained them and heard them. They were all seeking promotions. So, I always told each one of them that please go back and send me four judgments which you have delivered – one in favour of the citizen, one in favour of the Government, one in favour of the accused and one in favour of the prosecution. Send me your four judgments and I will make up my mind and then, support you. Sir, who does that these days? Nobody. Nothing is being done. And, Sir, as I said, you have to look into all these kinds of things. It can only be done by Members of the Bar, the organised Bar being represented on the National Judicial Commission. The social scientists must be represented on the National Judicial Commission and the academic world must also be represented. Today, jurisprudence has gone. One of the Members said that nobody understands jurisprudence these days. Jurisprudence is a dead, dead subject today. Sir, read one judgment. And, I don't mind telling you whether you treat it as contempt or not, I have stopped reading judgments because they are unreadable now. That's the trouble. My juniors in some cases come and brief me. They tell me that these are the judgments which are relevant in the case. I read those. Otherwise, Sir, I don't read them because it is a headache. My friend was right. He said that judgments have really become unreadable. That's true.

Sir, the National Judicial Commission, therefore, is the order of the day. That is the imperative requirement of our legal system and somehow, Sir, let us start it. You want a world of peace. Please stop building monuments over war heroes. Build monuments for those who have delivered justice, who have done good justice and who have turned out to be great Judges. Find out the greatest Judges and for God's sake, build monuments in their memories. When the Emergency took place,

one Judge delivered a dissenting judgment, Justice Khanna. *The New York Times* and the *Washington Post* said that the people of India will have to build a monument in the memory of this great Judge of India. Sir, did we do that? Of course, Justice Khanna came to be honoured later on in his life. But, Sir, we still have not built a good monument. Please do that and you will get good Judges. Sir, the Bar must be invited. You must find out that this lawyer specialises in a particular branch. We require that branch to be administered from the Bench. Invite those lawyers and the legal profession must consider it a moral, professional and ethical duty. In England, when a counsel is invited by the Prime Minister or the Lord Chancellor to become a Judge, he considers it his professional duty to say yes. He gives up all his practice and goes and attends the Bench. There, nobody thinks that he has given up his lucrative practice. That is an incident of professional life. I hope, lawyers will rise to that. Thank you so much.

SHRI D. RAJA (Tamil Nadu): Thank you very much. Many points which I wanted to raise, were raised by our esteemed colleague, Shri Ram Jethmalani. However, I would like to make a few points. At the outset, I appreciate the intention behind the Bill. Our judges must have comforts, their material living conditions must improve and there must not be any compromise on that score. Having said that, I must point out that the system in which we live today with the Constitution which is a republican one, the Parliament, the Judiciary and the Executive have certain defined roles, and they are very important components of our democracy. But very often we find that there are conflicts from time to time between the Parliament and the Judiciary, and I think, here, the Parliament which represents the will of the people, must be treated as the supreme since the Parliament makes laws, the Parliament represents the will of the people and the conflicts between the Parliament and the Judiciary must be sorted out appropriately, and in any way, the Judiciary should not encroach upon the rights and positions of the Parliament. The other problem is that justice must be given to people on time. Justice delayed is justice denied. In a way, justice hurried is also justice buried. But we find today in the Indian prisons, thousands of people who are kept in prolonged confinement, prolonged detention for petty crimes or for no crimes at all because they are not being tried, they are not being produced before the court, they are not being released, and this prolonged confinement, prolonged detention leads them to further crimes or this prolonged confinement makes them criminals, and in a society like ours, this is very disturbing, and the Judiciary will have to do something in disposing of these cases because these people are from the poorer sections of the society. They are not from the hi-fi section of the society. If you go to any central prison, the number of prisoners who are kept there for prolonged time without any trial, they are all from the poorer sections of the society. This is where the Judiciary must be more humane and must be more concerned to deal with these people.

Then, Sir, the Judiciary, I think, must be with tremendous integrity, and Shri Ram Jethmalani mentioned some names. We have glorious legacy of judges in our country. It is not only Justice

4.00 P.M.

Krishna Iyer, but also Justice Chinnappa Reddy, Justice Bhagwati, Justice Desai, and we can go on giving a number of names who were known for their integrity, who were known for their commitment towards the people, who were known for their commitment to the poorer sections of our society. Now, this has become questionable. That is where even the former Justice Bharucha quoted by Shri Ram Jethmalani, 20 per cent of judges in the higher courts are found to be corrupt. If judges are found to be corrupt, how to fight corruption, and corruption is so rampant, and corruption is like cancer in our system? How to fight corruption if judges are proved to be corrupt? Here, I think, the Judiciary, as an institution, is one thing; judges are human beings, is another thing. Judges are not angels that way. They come from the same society in which we all live, and they do have bias. One can say, it is a class bias, it is a caste bias. That is why people question the judgments also whether these judgments are independent, whether these judgments are objective or whether these judgments have some bias.

And you had also mentioned, Sir, when you spoke from your seat, about the judgments on certain workers' struggles or workers' movements. I think, it is transgressing; the judiciary cannot curb the rights of working people; the judiciary cannot curb the rights of trade unions. And in a democracy like ours, 'expression of dissent' is a constitutional right; that I understand. In a democracy like ours, people come to the streets to protest, to resist certain policies of the Government, which they do not agree with. You cannot take away that right in the name of maintaining law and order. Whatever examples people are giving are all very strange! Maybe, in very rare cases, once in a while, trade unions give a call for strike. Sir, here, I speak for my party 'Left', when we give call, we always make exceptions; we don't disturb pregnant women; we don't stop any sick man from going to the hospital. We allow supply of all essential services, supply of milk, supply of vegetables, and everything else. So, don't try to denigrate the legitimate strike of the working class. Don't try to denigrate the legitimate protest of the poor people, the working people, of this country. They have a right. If they do not fight, how can they raise their demands? In a democracy like ours, people have got that right. Here comes the question of the attitude of judiciary; how the judiciary understands these struggles; how the judiciary treats these struggles. They cannot be treated as undemocratic; that cannot be allowed in a democracy like ours. This is the first point, Sir.

The second point that I must say about the judiciary is this. I am not a lawyer like Mr. Ram Jethmalani. I am talking about jurisprudence; I am not talking about criminal and civil laws, the intricacies involved in these cases and how to deal with that. But, I understand this as a political activist; our Constitution has an important chapter on The Directive Principles'. I do not know whether the judiciary takes note of the existence of 'Directive Principles for State Policy', and if the judiciary does take note of it, judiciary should not have allowed many neo-liberal measures taken by

the Government this time. That is where I question the role of judiciary also. Had the judiciary shown its small commitment to the Directive Principles, the Government could not have gone for neo-liberal policies and implementation of the atrocious, neo-liberal policies, which take away the rights of the common people, and which, in fact, allow the disparities to grow in an unprecedented manner. The Directive Principles talk about wealth that it should not be concentrated in the hands of a few individuals. What is the judiciary doing about that? That is where I question the role of the judiciary. If, at all, it is an independent judiciary, this judiciary should go by what the Constitution says and what the Constitution gives to the people. It is our Constitution. This Constitution provides and it, at least, guarantees justice social political and economic. Our judiciary upholds this aspect of the Constitution, to guarantee justice – social, political and economic. That is why, I question the role of the judiciary. And, there, I think, the judiciary needs to be more accountable; the judiciary needs to be more objective, and the judiciary must be above all partisan positions of our society. Here, I think, the judicial reforms become imperative. Now, it is high time that we went in for judicial reforms. There, I agree with many of the previous speakers; we should seriously think of constituting a National Judicial Commission. These judicial reforms must be implemented and judicial accountability must be established. Here comes the question of disclosure of assets by Judges. Can Judges disclose their assets or not? I do not know why it has become a debatable point. What is wrong in the Judges disclosing their assets? There was a seminar, held in New Delhi, by the Bar Association.

Our respected Ram Jethmalani was saying that the Bar must be involved in the constitution of the National Judicial Commission. There was a seminar. Many legal luminaries were sitting there. I said, "I am a layman. I am asking: What is wrong in the Judges declaring their assets?" Then everybody said, "What is wrong in the Judges declaring their assets?" Why should it be an issue of debate? Why should it be an issue of controversy? Why shouldn't the Judges declare their assets? If a Member of Parliament has to declare his assets, he has to file an affidavit. Then, why shouldn't a Judge? We are not asking for something which we should not ask for. If you increase the salaries of Judges, we have no problem. Yes, they must be given enough salaries and their comforts are very important. But why shouldn't they declare their assets? What is the way out? How are you going to do it, as a Government, as the Law Minister? Are they above all these things? At least, that must be explained to the common people because finally it is the common people who are the guarantee for any justice. They are the guarantee for any democracy. They are the guarantee for any functions of the bureaucracy. If people don't have confidence in the judiciary, then the judiciary can't perform. You can say that they are performing the duties of divine power. But when people don't have confidence in the judiciary, where is the question of discharging the duties of divine power? That is

where, I think, the judiciary must rise above all pernicious, biased and parochial tendencies. Our country is diverse in nature. It is a very complex country. There is a unity of different cultures and social milieus. If the judiciary does not reflect and understand this, we will get into troubles. That is why people demand that there must be proper representation of different sections of the society in the judiciary. There are also parties in India which demand reservation in the judiciary also because they think judiciary is biased. So, it is time that we restored the integrity of the judiciary. It is time that we restored the confidence of the people in the judiciary for which the Government and we, as Members of Parliament, will have to do certain things. I think, when a conflict between the judiciary and the Parliament arises, the Parliament must have the supremacy to settle the issue. The Parliament has the will of the people to make laws and the judiciary is there to uphold the laws and to see to it that the law is implemented. With these words, I conclude.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Shri Gnanadesikan. You have three minutes.

SHRI B. S. GNANADESIKAN (Tamil Nadu): I will finish within three minutes, Sir. Most of the points have been covered by my colleagues. But on some points I have some reservation. On some points, I endorse their views. Since I have no time to clarify or modify or express my dissent from their views, I confine myself to a few points which I want to express before this august House.

My good friend, Shri Shantaram Laxman Naik, mentioned about the order of the Central Information Commission which was challenged by the administrative side of the Supreme Court in the Delhi High Court. A question was raised: How can a High Court decide on the views of the Supreme Court? There is the administrative side of the judiciary and there is the judicial side of the judiciary. We know that case where the full court on the administrative side compulsorily retiring a subordinate officer and two Judges of the same court, sitting on the judicial side, setting aside the decision of the full court of the judiciary on the administrative side. Therefore, there may not be any problem.

Coming to the points raised by my friend, Shri Raja, he spoke of the right to bandh, the right to stop others. He has expressed certain things.

THE VICE-CHAIRMAN (PROF. P.J. KUREIN): He has got the protection of my being in the Chair, though he was opposing what I said.

SHRI D. RAJA: That was my view.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): That is your view, I know. I appreciate that.

SHRI B.S. GNANADESIKAN: There is a proverb by Prof. Bernard Shaw. It says, "The freedom of your walking stick stops where my nose begins". The Supreme Court wanted to protect my nose

only. When you wanted to wave the stick, the Supreme Court and the high courts interfered to protect my nose. Therefore, there is nothing wrong in that. In short, the judges must be respected. At the same time, the erring judges must be removed. Freedom and independence of the judiciary has to be protected. These are the three principles on which the judicial foundation lays.

Now I come to PIL. There are many issues like minimum wages, pollution, traffic, encroachment, slum improvement, slum clearance, etc. People were able to get protection only because of the interference of the judiciary. When the legislature fails to act and the executive fails to implement, it is the judiciary which steps in and tries to protect the ordinary citizens and slum dwellers. Recently, when the advocates were assaulted inside the High Court by the police, the High Court took *suo motu* contempt proceedings, just two days back.

Sir, I would like to make two points so far as this Bill is concerned. Firstly, the salary of the Chief Justice of India has been fixed at Rs. 1,00,000. The salary of the Governor is Rs. 1,10,000. The Presidents gets Rs. 1,50,000 and the Vice-President gets Rs. 1,25,000. If the Chief Justice of India is given Rs. 10,000 more, he would be on par with the Governor. I do not know why the salary of the Chief Justice of India has been fixed at Rs. 1,00,000, which is just Rs. 10,000 less than what a Governor gets. His salary should be increased by Rs. 10,000 in order to bring the Chief Justice of India, the highest constitutional authority, on par with the Governors.

The second point is in regard to the LTC. Sir, only three LTCs are given to the Supreme Court judges. Many of the judges hail from various States, like Tamil Nadu, Andhra Pradesh. They come from various States. If they want to go to their native places, three LTCs are not sufficient. So the number should be increased. I hope the Law Minister would take these two points into consideration and if necessary, would try to accommodate them in future.

So far as the appointment of judges is concerned, my personal view is that there is political interference in the appointment of judges. Therefore, there should be no political interference in the appointment of judges. They should be appointed independently. How it can be done, the Government has to decide. Thank you.

SHRI H.R. BHARDWAJ : Mr. Vice Chairman, Sir, at the outset, I seek your permission to thank all the hon. Members who have made illuminating speeches. Two former Law Ministers have spoken. Senior advocate and a great fighter for human rights, Shri Ram Jethmalani, whom we all love and have very high regard for him, made vast contribution to the field of law. I hope he would continue to make such suggestions. My dear friend, Shri Arun Jaitley, also spoke. He has made very useful speech. His speech contained very constructive suggestions. He himself was the Law Minister. He knows that there is hardly any scope for a Law Minister to straightaway make improvements in any deficiency in the system. My friend Shri Virendra Bhatia, who himself is a senior advocate, and a very

knowledgeable person also spoke. Shri Shantaram Laxman Naik, a very important Member of Parliament also spoke. I may not agree with his philosophies because he goes to the extremes. Then Shri D. Raja, Prof. Kurien and Shri Gnanadesikan also made their contribution. All these speeches by themselves were a treat to listen because they were very objective, focussed and with a view to help in improving the system of justice administration. I think the debate has been very fine. I have listened to every point made by the hon. Members. But we must remember what our founding fathers envisaged in the Constitution because they were men of outstanding vision. Sir, I agree with my senior friend, Shri Ram Jethmalani, that administration of justice is a divine function because as you travel back, in the ancient times, justice was associated with dharma. Dharma is not simply a ritual. Dharma is righteousness, and righteousness includes justice. If I remember a famous Jewish tradition in the Toha, they say, "One hour of life spent in administration of justice is equal to heaven." This is the quality; this is the high place given to it in all religions, including Hinduism or Islam. This is a part of Quran Sharif; this is there even in the Bible. Every year, the English Judges and Barristers assemble in Westminster Abbey and in the Church and take a pledge saying, "God give us the strength to serve our people in the administration of justice." So, just to remind, it is not to discriminate, but righteousness and to restore Dharma is the responsibility of judges. That is why I agree that it is a job of high honour, and people of a very high quality of wisdom and scholarship should occupy this position. I wish this is the view which the hon. Judges themselves take, that they are at once the image of integrity and scholarship. With that, I submit, Sir, that the power of judicial review was conferred in India in the Constitution. It was borrowed from various sources by our founding fathers. And, I myself am making a research these days on the power of judicial review. Also, people frequently write in the Press and sometimes talk about it in the debates. Sir, the power of judicial review fertilises democracy. Without this, there will be no democracy at all. There will be arbitrariness at large, discrimination at large. I remember the prophetic word of Nehru, while intervening in the debate in the Constituent Assembly on the Appointment of Supreme Court Judges. He intervened to say, "The House should ponder over rules by which we can appoint Supreme Court and High Court Judges, who are men of high integrity and outstanding wisdom." And I add one line more of what he said that people, that is, the Executive, who can even go against us if we do anything wrong. Dr. Ambedkar also intervened to say that the power of appointment of Judges should not exclusively be vested in the President of India, and he explained that this power should be left with responsible offices, high offices, say, the Chief Justice of India, a very high office, and the President of India, the Head of the State. So, this is the constitutional position, that the President shall appoint judges in consultation with the Chief Justice of India. This is precisely the scheme that it is not left in one hand, but it has been left in various hands. In the High Court, the process starts with the Chief Justice of that High Court, and the Chief Minister and the Governor are consulted. They

also obtain reports from their agencies about their integrity, and remit the cases to the Law Minister, who also consults the I.B, Secret Service and all that.

Thereafter, files are sent to the Chief Justice of India. The Chief Justice makes discreet inquiries about the quality and integrity of the persons concerned. Very wide-ranging consultation goes into it. I am proud to say that in our country, very high class judiciary has served the nation. I would mention the first Chief Justice, Shri H.J. Kania, whose nephew later became a Chief Justice. Then, it was Shri Patanjali Shastri, a great scholar and jurist. Thereafter, Shri P.B. Mukherjee. Then, Shri S.R. Das. One after the other, very eminent Chief Justices and Judges have occupied seats in the Supreme Court. Similarly, in High Courts too, there were Judges of great eminence, and they have served the country with great dignity and dedication. That is why, Sir, we are a great democracy and a great Republic; all the three limbs of the State work very hard to maintain democracy and freedom. All this goes to the credit of our founding fathers and their successors. Sir, keeping in mind that this institution has served the country very well, and there has been no criticism either about the Legislature or about the Judiciary till few years back, and if now we see some cases where the quality or integrity is being questioned, it becomes the responsibility of all of us because in the analysis of the whole constitutional scheme, it is ultimately the Legislature which has to do things, which has to set things right. In 1950 itself, when Jawaharlal Nehru started zamindari abolition measures, the court had intervened and stayed the operation of the law. But, immediately, the Parliament took cognizance of it and passed the First Amendment to the Constitution and the Ninth Schedule was added to the Constitution to protect the policies of the Government. – It is a 'dominant domain' – these are the words used in the first judgement on zamindari abolition case, in Maharaja Darbhanga's case of the Executive and the Legislature to make policies for the nation. Judiciary cannot make policies for the nation. It is a demarcated area. The Legislature had always been respecting this dominant domain, that only the Cabinet, represented by the elected Members of the Parliament have the right to make policies for the nation. There has been no difficulty so far as this was concerned because there have always been two views on this matter, right from the beginning of democracy all over the world. Judicial activism and judicial restraint are two debates going on from the famous case of 1883 in the United States of America and, later on, in Roosevelt's time, when he had threatened to pack the court. But this is a healthy debate. No institution should try to ingress upon the area demarcated to another institution for the functioning of a healthy democracy. We also believe in the same philosophy. If I am correct, this issue was resolved in the famous UP case, in Keshav Singh's case, which was also the first reference by the President of India on this issue.

There was a clash between the Speaker and the High Court of Allahabad. It was the Keshav Singh Case, and, I think, it was Justice Gajendragadkar who gave the opinion of the court, and this is what the Government accepted, and proceeded further and the matter was resolved. So, this

debate about judicial activism and judicial restraint is very healthy because the philosophy of the Constitution is not static. See, how much we have changed! Up to Nehru, there was one constitutional philosophy that Parliament is supreme. Later on, it slowly changed in the Kesavananda Bharati Case when limitations were put on the power of the Parliament, that Parliament cannot amend so as to alter the basic features of the Constitution, the interpretation of the Constitution. Later on, the Minerva Mills Case cemented it, that Parliament even cannot convert itself into a Constituent Assembly. You have to go to referendum. How? The referendum is not mentioned in our Constitution. What I am submitting is, because the Kesavananda Bharati Case is an interpretation of the Constitution, the Parliament and the Governments have followed it, unless it is changed either by a larger review, review by a bigger bench, or, by amending the Constitution itself. So, there is no difficulty in debating these issues in the House.

Sir, I am also proud to say that the Legislature and the Judiciary have maintained great respect for each other. We have never discussed the conduct of sitting judges in any House, Sir, and even today, nobody has done it. So, these are mutual respects of institutions of democracy, and India is very proud to have such a democracy where the three limbs of the State are functioning, by and large, in coordination, unison and in a cooperative manner; otherwise, where would have been our democracy? We have been over-indulgent in protecting the power of judicial review. I agree with Mr. Ram Jethmalani when he said that this is an institution which is the custodian of the Constitution, custodian of civil liberties, custodian of human rights. We should not weaken it because it does not serve anybody else's purpose. It serves the purpose of the people of India. Against what? Why do we have the power of judicial review? I have gone into this very seriously and, I said, right from the early days of the nineteenth century till today, the power of judicial review primarily means two things. One is that laws which we pass from the Parliament should not be *ultra vires* of the Constitution. Suppose, we are majority and we decide, 'no, no; we will not care for the Constitution, we will pass this law'. There is a power of judicial review which says, anything which is void of the Constitution, they will strike it down. So, it is with a view to protect the Constitution and fundamental rights that power of judicial review is used, and it is for the benefit of the people of India. It is not a privilege enjoyed by the judges. It is a privilege of the people of India that arbitrary laws are not passed, that *ultra vires* laws are not passed by the Parliament. Otherwise, I believe, always that there are no factors on the power of the Parliament. The Parliament is supreme in matters of legislation. There is an extreme suggestion that suppose this happens, that happens, this is not permissible under the system. There is a philosophy of checks and balances within the Constitution, and this is the correctional House. The Parliament is the final arbiter of all philosophical and political policies' and the Government of the day, whoever is in the Government, has to take note of all this. But, Sir, as I said, when my learned friend, Shri Arun Jaitley spoke, he has very elaborately made many points, one after the other.

On one point he said that he did not agree with the Law Minister's statement – that is my statement-that the National Judicial Council, for taking decisions on the misconduct and discipline of the judges, should include not only their own peers, but they should include some public men also, independent persons also. This is not a dispute between two colleagues. It is a difference of opinion and the difference of opinion is also because, again, this power of judicial review is there; suppose you include outsiders. Again, somebody will go to the court and he would say that this is an infraction on judicial independence and that it should be struck down. For the sake of protecting the good intention of the law, one should always take care that you do not include such things as may face problems in the courts. Otherwise, whatever he spoke, there is no controversy on the salary and service condition of the judges. Every hon. Member has supported it. There is no complaint mostly about their discipline also.

But, two problems have really come on which I need to put the records straight. Sir, right from the enactment of the Constitution till the Advocates on Record versus Union of India, 1993, Supreme Court, there has been no problem at all on appointment of judges; it was the same consultation process and the President appointed. It was the brilliant lawyers who approached the court and said, 'We have no faith in the politicians.' They said, 'It should be handled by the judiciary.' One of them was the former Law Minister himself, and a great Constitutional philosopher has argued this. I was the Law Minister at that time. I know under what circumstances these arguments were made. But, you cannot run the court on the whims of lawyers alone. It is the Parliament which decide it. The law was changed and the Constitution was wrongly interpreted. I am saying in full responsibility. How can you take away the power of the Cabinet and give it in different hands? The Cabinet advises the President. Right from Shamsher Singh's case, this is the law of the land. Justice Krishna Iyer, one of the most outstanding judges, it is his judgment. I can quote the paragraph also. Later on, the Supreme Court got divided 4:3 in SP Gupta's case, 1982, Supreme Court. There was one set of judges who gave primacy to the President of India and others did not agree.

The limited question now is: How to correctly interpret the Constitution, that President should remain the appointing authority? And, the aid and advice of the Council of Ministers cannot be taken away by any interpretation of the Constitution because this is the philosophy of governance in the country. Everything is done in the name of the President. But, under the Allocation of Business Rules, the President allocates the portfolios to the Ministers and they carry out those functions on behalf of the President.

This is the Constitutional philosophy and, therefore, I submit that there is unanimous body of opinion now to say that this system needs a review. Now, what do we do? We had rounds of consultations from Dinesh Goswami onwards, he moved one suggestion; my comrade friends always

were behind that, perhaps; then Shri Arun Jaitely brought another law; then, the earlier NDA Government appointed Venkatachalaiah Committee for reviewing the Constitution. So, nobody has neglected this aspect. This is under continuous study.

Sir, this is the study part of it. Why people are so conscious in dealing with it? Because, judiciary is a very delicate nerve in the Constitution. If the nerve does not function well, nothing will function well.

Therefore, we should not be careless about doing things. Every Government has applied its mind, so are we applying. I made a study about judicial discipline and extensively from all civilised societies. President Bill Clinton in the United States appointed a Commission on this very problem and that report has come now, it is available. Then I collected material from Canada, they have exactly the same provision as contained in the National Judicial Council, which I have put in for the approval of the Parliament. So, judicial conduct and misconduct, we are prepared very well and if there are any changes, and there is unanimity of views, I think, very shortly we will have in position a statutory provision to deal with judicial misconduct and corruption. We are not sitting idle. Sir, on the question of appointment also, this is a very important area and what Justice Venkatachalaiah suggested I am tending to go by that. It is replacing the present position by a National Judicial Commission consisting of certain persons. Now, there is a difference of opinion about how to man that Commission of judicial appointments. My learned friend had some suggestions, Arunji had some suggestions, others may have some suggestions, we will have to bring a consensus because in this country, I am happy to inform, there has always been consensus on judiciary, which is absolutely independent of Executive. And the Executive has to be very careful, I must make it very clear, executive actions must be backed by laws and they should also conform to the public interest and they should not be arbitrary. Sometimes we feel as Ministers that the courts have not done properly. But, Sir, when citizens go with petitions that this is happening and this is not being done by the Executive and citizens' grievances are there, the access to justice compelled them to pass orders. The famous case of removing the diesel and other buses for CNG, the Government accepted it and action was obtained under the environment law and all this. So, it is a continuous evolution of Constitutional philosophy, which is very important for a successful democracy. So, we should not put fetter either on Executive or Legislature or Judiciary. Let them go on and do their work constructively in their own areas and in good faith. So, I have invented a new system. Every year all Chief Ministers meet, Chief Justices meet, Prime Minister presides, the Chief Justice of India meets Supreme Court Judges and discusses the matter of national importance so that our country gets the best justice administration and best justice to the people and the change is coming. By this consensus your courts' construction has improved, your computerisation of courts has taken place. Now recently we passed the Grameen Nyayalaya Act and India is coming on the top nations in the

matter of justice administration. If you travel outside India, people are very, very appreciative of our independent judiciary and the whole credit goes to the Government and Parliament because it is they who have created a vision of judiciary and about its independence. If you curtail it, it will be our failure because George Washington said, The judiciary is the finest pillar of the Government." They do this work for the Government, therefore, I am very happy that hon. Members have spoken in the best traditions of our founding fathers in giving independence and autonomy to the judiciary. Sir, about quality, yes, the quality of the judges should be first rate. This is what Nehru said, what Ambedkar said, what Mahatma Gandhi himself said. He was a barrister from Court of Inns. All of them were barristers. Sardar Patel was a barrister, Nehruji was a barrister, and so they had in their vision the finest quality of judges and I have said that we have had finest quality of lawyers and judges. If there is a decline in standards in public life, it is bound to affect the other parts of the Government or the State.

We must restore the quality of public life, the probity of public life and quality of judiciary. Quality is important in all walks of life. There is a suggestion about specialisation. Sir, I feel that criminal law deals with life and liberty of our people and our founding father in relation to the code of criminal procedure gave three most important articles in the Constitution, ariicle 20, article 21 and article 22 to supplement the British law which we inherited and they are very important. Article 21 governs life and liberty in a very wide spectrum. Therefore, it is expanding. So, we must have judges in High Courts and Supreme Court who specialise. Now, there is a demand from the business world that we should have commercial Benches, commercial litigation. Then, there is patent on intellectual property rights. So, all these demands are coming as India is marching ahead, progressing and shining. But you must find talent. Unless you create talent, from where will you pluck it? The talent will come out of my National Law schools which have been created by the various States and they are producing fine boys and girls who will be outstanding by all standards in legal education. So, slowly and steadily India is achieving its high place in the international community and everybody is praising. Let us not be pessimistic at all. Our Government has computerised courts. We have provided money for fast track courts as was started by Vajpayeeji's Government. We have not said that this should be abolished. We have given more money. We have given more facilities, full facilities on computerisation. So, our judiciary is going to be one of the finest in the world. So, therefore, when we give to judges we should give with an open mind. What Winston Churchill said regarding British judiciary, I think, is relevant. He said, 'we should not measure the services of judges in pounds and shillings. We should give straightaway whatever is possible within the means of our nation.' So, this is what has happened. I am not very particularly very keen to discuss what has been given. Whatever Government has given is given. Let me tell yoli, we have made a very, very attractive package for judges. Earlier when I was a Minister in 1986 I amended the law in all aspects. Earlier, there was no

chauffeur-driven cars for judges. Now, they have chauffeur-driven cars with a limited quantity of 200 litres of petrol. Then, later on, we gave them two LTCs. They are not using it on working days. We will see that some guidelines are issued to the Chief Justices. Then, we increased their sumptuary allowance. Even now, Sir, I will inform the hon. House that with Constitutional difficulty the Governor was already receiving higher salary than CJI. But I have added so much perks. We have given Rs. 10,000 tax-free sumptuary allowance to the Chief Justice of India. Now, it is Rs. 20,000 as sumptuary allowance. So, it is added to the perks. So, every care has been taken that we should not deny any benefit that is possible within our national wings. So, I am very grateful, Sir, I express gratitude to the Chair as well as to the hon. Members for giving me such vital support for this great institution. Thank you very much. Hands up, the debate goes up.

THE VICE CHAIRMAN (PROF. P. J. KURIEN): Now, I put the motion to vote. The question is:

That the Bill further to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958, as passed by Lok Sabha be taken into consideration.

The motion was adopted.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 15 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI H. R. BHARDWAJ: Sir, I move: That the Bill be returned.

The question was put and the motion was adopted.

————

The National Capital Territory of Delhi Laws (Special Provisions) Bill, 2009

THE MINISTER OF STATE IN THE MINISTRY OF URBAN DEVELOPMENT (SHRI AJAY MAKEN): Sir, I beg to move:

"That the Bill to make special provisions for the National Capital Territory of Delhi for a further period up to the 31st day of December, 2009, and for matters connected therewith or incidental thereto, as passed by Lok Sabha, be taken into consideration."

Sir, six forms of unauthorised developments are given protection through this Bill. The first one is the slum dwellers and Jhugi Jhonpri clusters, schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agriculture inputs of produce, including diary and poultry in rural areas built on agricultural land, unauthorised colonies, including village *abadi* and its extension, urban villages, in addition to village abadi and its extension, and existing farm houses involving construction beyond permissible building limits.